IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 658 of 2004 (M/B)

Date of decision: 26th August, 2004

For the approval of:

Hon'ble Chief Justice V.S. Sirpurkar, C.J.

Hon'ble Mr. Justice Irshad Hussain, J..

- Whether the order/judgment should be sent to the reporters for reporting? ( )

- Whether the reporters be allowed to see the judgment? (Yes)

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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 658 of 2004 (M/B)

Vipin Kumar Agarwal
S/o Late Sri Ram Kumar Agarwal,
R/o Mohalla Malian,
Seohara,
District Bijnor ……. Petitioners

Versus

Secretary
Food & Civil Supplies,
Dehradun and others. …….. Respondent

Sri Vijay Bhatt, Advocate learned counsel for the petitioners.
Sri N.C.Gupta, learned Standing Counsel for the State.
Sri V.K.Kohli, Senior Advocate i/b Mr. I.P.Kohli, Advocate for the respondent no.3.

Coram: Hon. V.S. Sirpurkar, C.J.
Hon. Irshad Hussain, J.

Date: August 26, 2004

[Per Hon'ble the Chief Justice)]

1. Heard learned counsel for the parties.

2. The respondent no.2 invited tender for the transport contract. Some persons responded to that tender notice. That tender notice was, however, cancelled. Second time, a tender notice was effected by the advertisement dated 26.06.2004. To this the petitioner responded. In pursuance to this response, he was invited to negotiate rates further. However, in the meantime, the respondents, particularly respondent no.2, withdrew the advertisement and continued the earlier transport contractor, respondent no.3, for a further period of one year. This was done probably with the objective to save some Government money as the rates quoted by the petitioner were 0.39 paise per km., whereas the rates on which the third respondent was working was 0.37 paise. Therefore, in pursuance of the power to extend the contract, one year's extension was granted to the third respondent. Petitioner is feels aggrieved by this and says that his tender should have been accepted because it was the lowest tender and further

Government step of extension of the contract in favour of the third respondent, was not correct.

3. We do not agree with this. At the time of the argument, we specifically required the earlier agreement to be shown, from which it is clear from clause (d) therein (page 3), that there was power of extension with the Government to extend the contract. The Government has taken stated before us that the contract has been extended only in pursuance of that clause.

4. Learned counsel for the petitioner, however, submits that the rate being lowest @ 0.37 paise per km. is misnomer because this was a flat rate given by the third respondent, whereas the petitioner had given different rates for the hill roads and the plain roads and that his offer was more beneficial to the Government. He points out that the said factor was also mentioned in the advertisement, as well as the contractors were invited to give different rates for the plains as well as hill roads. We are not impressed by this at all for the simple reason that there should be discretion with the Government in the matter of contract as per the law laid down by the Apex Court in the case of Tata cellular Vs. Union of India reported in A.I.R. 1996 SC 11. If the Government thought it better to extend the contract, it was empowered to do so. We do not find nay mala fide in the matter. This is apart from the fact that there is no mala fide alleged and for that matter no specific person of officer has been named as a party to this petition. We do not wish to interfere in the matter.

5. The petition has no merit. It is dismissed accordingly.

(Irshad Hussain, J.) **(V.S. Sirpurkar, C.J.)**
26.8.2004 **26.8.2004**

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